



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Regulatory Commission of Alaska

Sean Parnell, Governor
Emil Notti, Commissioner
Robert M. Pickett, Chairman

January 8, 2010

In reply refer to: Engineering
File: U-09-122 /
U-09-123
LO#: L1000001

Jila Stuart
Chief Fiscal Officer
Haines Borough
P.O. Box 1209
Haines, AK 99827

Vicky Cox
Crystal Cathedrals Water and Sewer System, Inc.
P.O. Box 1174
Haines, AK 99827

Dear Ms. Stuart and Ms. Cox:

The Regulatory Commission of Alaska (RCA) received the joint application to transfer Certificate of Public Convenience and Necessity ("Certificate") Nos. 546 and 547 from Crystal Cathedrals Water and Sewer System, Inc. (CCWSS) to the Haines Borough (Haines) on December 21, 2009. The purpose of this letter order is to inform you that your application is incomplete and is dismissed without prejudice to refile per 3 AAC 48.650(a).¹

New filing requirements for the submission of applications became effective October 16, 2009.² The new regulations provide for the dismissal of applications that are not complete. Your application, as filed, was found to be incomplete. The *RCA Form PU 103, Application for Transfer of Certificate*, requires applicants to file items, which were not submitted with your application. These items include:

¹ 3 AAC 48.650(a) – "The commission may dismiss an application that (1) does not comply with a requirement established by statute or regulations and forms adopted by the commission; (2) contains a request for waiver that does not comply with 3 AAC 48.648(c); or (3) contains a petition for confidential treatment that does not comply with 3 AAC 48.648(d)"

² A copy of the revised regulations is enclosed with this letter.

1. Copies of all agreements, contracts and other data setting forth in full the terms, conditions, consideration, authority, etc. by which the applicant proposes to effect the transfer of the certificate of public convenience and necessity.
 - The purchase offer submitted with your application is not the final purchase agreement. Additionally, it references several contingencies including an audit, an inventory of property, a title search, a court record search, an engineering review, a property appraisal. These contingencies must be addressed before an application for a transfer of the CPCN is submitted. An executed purchase agreement should be filed with your application when all conditions and contingencies are resolved.
2. The transferee's proposed tariff including rates, rules, and regulations.
 - The tariff submitted contains only the current rates for service in its certificated service area. No rules for service were included with the tariff. A reasonably thorough tariff is required in order to assess the managerial competence of the transferee. A model water and wastewater tariff/ordinance can be found on the RCA website at:

<http://rca.alaska.gov/RCAWeb/ProvisionalCert/ModelTariffs.aspx>
3. Comparative statement of financial condition at the beginning and at the end of the most recent calendar year and related comparative statements of income and undistributed earnings for the years then ended.
 - Haines must file the statement of financial condition and related comparative statements of income and undistributed earnings for its most recent fiscal year ending on June 30, 2009. Haines filed financial statements for the fiscal years ending June 30, 2007 and June 30, 2008. In the alternative an application for waiver of this requirement may be made and may be granted if good cause is demonstrated.

The new regulations also require applicants to file a proposed public notice of their application, along with a purchase order reflecting that the applicant has arranged for publication of the notice in a newspaper of general circulation in this State.³ If you choose to reapply for a new Certificate, the notice and purchase order must be included.

³ 3 AAC 48.648(e) – "An applicant shall file a proposed notice of the application with the commission, along with a purchase order reflecting that the applicant has arranged for publication of the notice in a newspaper of general circulation in this state..." Recommended public notice language is enclosed with this letter.

3 AAC 48.650(c) allows the commission to request additional information from an applicant when our technical staff finds that an application which is otherwise complete, lacks certain information needed to determine and fully evaluate its merits. We request that a revised service area map reflecting the combined service area of Haines and CCWSS be included with the application if it is refiled.

All filings made thus far in this docket should be included with a new application, along with the information required above.

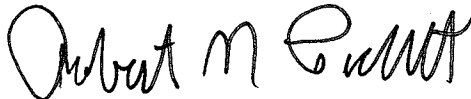
As this application is dismissed without prejudice to refileing, you may file a new application with us at any time.

If you require clarification or assistance with any of the items listed above, please contact James Keen, Utility Engineering Analyst, at (907) 263-2121 or via email at james.keen@alaska.gov

BY DIRECTION OF THE COMMISSION

Sincerely,

REGULATORY COMMISSION OF ALASKA

A handwritten signature in black ink, appearing to read "Robert M. Pickett", written in a cursive style.

Robert M Pickett
Chairman

Enclosure(s): 3 AAC 48 Revisions [Commission Order R-06-01(5)]
Recommended Public Notice Language

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Kate Giard
Mark K. Johnson
Anthony A. Price
Janis W. Wilson

In the Matter of the Consideration of Changes to
Regulations Addressing Completeness
Determinations For Applications

R-06-1

ORDER NO. 5

ORDER ADOPTING REGULATIONS

BY THE COMMISSION:

Summary

We adopt regulations addressing filing requirements for and the processing of applications filed with the Commission.¹

Background

We opened this docket to consider adopting prefiling procedures for applications and revising procedures for noticing applications and determining whether applications are complete. After conducting a workshop to review our new automated case management system and internal processes for addressing the completeness of applications,² we crafted proposed regulations and publicly noticed our regulations

¹Those regulations are attached to this order as an appendix.

²The workshop was held February 23, 2007. Representatives of Alaska Communications Systems (ACS), GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI (GCI), and the law firm of Hartig Rhodes Hoge and Lekisch, P.C. participated.

1 proposal.³ We invited three rounds of comments, receiving comments from ACS,⁴
2 ConocoPhillips Transportation Alaska, Inc.,⁵ Golden Valley Electric Association, Inc.,⁶
3 and GCI.⁷ We adopted regulations at our September 30, 2008, public meeting.

4 Discussion

5 We made several revisions to our regulations proposal based on
6 comments received in this docket. Below is a summary of each section of the
7 regulations adopted at our September 30, 2008, public meeting.

8 3 AAC 48.648 Complete Applications

9 Subsection (a) Applicability

10 This subsection provides that the adopted regulations apply to
11 applications subject to timelines under AS 42.05.175 and pipeline applications filed
12 under 3 AAC 48.625.

13 Subsection (b) Application Complete Upon Filing

14 This subsection provides that applications are considered complete upon
15 filing unless (1) rejected within 15 business days, (2) accompanied by a waiver request
16 that is subsequently denied, (3) accompanied by a petition for confidentiality that is
17 subsequently denied and purportedly confidential information submitted under the
18 petition is withdrawn from the record, or (4) not accompanied by a proposed public
19 notice of the application.

20
21 ³The initial public notice was issued on June 11, 2007, while a supplemental
22 notice was issued on July 17, 2008.

23 ⁴*Pre-Order Comments of Alaska Communications Systems*, filed March 10,
2006; *Comments of Alaska Communications Systems*, filed June 2, 2008.

24 ⁵*Comments of ConocoPhillips Transportation Alaska, Inc. to Proposed Changes*
25 *in Regulations*, filed July 11, 2007.

26 ⁶*Golden Valley Electric Association, Inc.'s Comments*, dated July 11, 2007.

⁷*Comments of GCI*, filed July 11, 2007; *Comments of GCI*, filed June 2, 2008.

1 Subsection (c) Applications Accompanied by Waiver Requests;

2 Subsection (d) Applications Accompanied by Confidentiality Petitions

3 These subsections allow us to resolve a request for waiver of an
4 application filing requirement or a petition for confidential treatment of application
5 information before determining whether an application is complete, and specify when an
6 application accompanied by a waiver request or confidentiality petition will be
7 considered complete. The regulations prescribe a pleading cycle that allows the filing of
8 a response to a waiver request or confidentiality petition by the end of the comment
9 period, and allows the person requesting the waiver or seeking confidential treatment to
10 file a reply to the response within five business days of the end of the public comment
11 period. We are allowed 30 days from the end of the public comment period to deny or
12 grant the waiver request or confidentiality petition.

13 Subsection (e) and (f) Notice Requirements

14 These subsections require applicants to file a proposed notice and
15 purchase order (reflecting that the applicant has arranged for publication of the notice)
16 with the application, and specify the contents for the proposed notice. Our regulations
17 state that we will arrange for publication of the public notice within five business days of
18 the date of the filing of the application. We have prepared and provided a template for
19 applicants to follow when preparing the notice required under this subsection,⁸ which
20 will be posted on our website after these regulations become effective.

21 3 AAC 48.650 Incomplete Applications

22 Our regulations discontinue the practice of allowing applicants to
23 supplement incomplete applications in all instances, adopting an approach in which we
24 have discretion to dismiss incomplete applications without prejudice to refiling. The

25
26 ⁸See Order R-06-1(3), Appendix B; Order R-06-1(4), Appendix C.

1 regulations also provide that the commission order dismissing the application will
2 explain why an application is dismissed.

3 3 AAC 48.652 Supplemental Information on Complete Applications

4 This section retains our ability to request additional information after an
5 application has been considered complete. This section further specifies that if the
6 applicant fails to provide the requested supplemental information, we will adjudicate the
7 application based on the information on file.

8 3 AAC 48.654 Contested Applications

9 To add further clarity to our application processes, we establish
10 procedures for contested applications. This section clarifies the timing of filing and the
11 required content of a protest, and allows a response to a protest filing. The protest must
12 be filed by the end of the comment period, while the applicant has ten days from the
13 close of the comment period to file a response to the protest. This section also requires
14 that we issue an order indicating whether there will be a hearing within 15 days of the
15 filing of the response to the protest.

16 3 AAC 48.656 Separate Applications

17 Our experience handling multiple applications within a single docket
18 demonstrates that in many instances such an approach can be unnecessarily
19 cumbersome and inefficient. We require applicants to file separate applications for
20 certain types of requests, and incorporate into our regulations the flexibility to consider
21 multiple applications in separate dockets in instances where separate applications are
22 not required. Applications requesting eligible telecommunications carrier designation in
23 more than one study area or seeking the issuance of more than one certificate of public
24 convenience and necessity will be rejected if submitted under a combined application.
25 Separate applications are allowed (rather than required) when an applicant seeks to
26 acquire more than one certificate or provide telecommunications service in more than

1 one study area, but we expressly reserve the right to open separate dockets to address
2 those types of filings and require the applicant to file additional copies of supporting
3 information.

4 3 AAC 48.661 Housecleaning Revisions to Application Timelines

5 Currently the timeline for determining the completeness of an application
6 is stated at 3 AAC 48.661(f). Regulations adopted in this docket specify a procedure in
7 which applications are complete unless rejected for one of the reasons stated in
8 3 AAC 48.648(b). To accommodate this revision, we revise 3 AAC 48.661(f) to provide
9 that we will determine if an application is complete in accordance with 3 AAC 48.648.

10 This order constitutes the final decision in this proceeding.

11 ORDER

12 THE COMMISSION FURTHER ORDERS that the regulations set out in the appendix to
13 this order are adopted.

14 DATED AND EFFECTIVE at Anchorage, Alaska, this 16th day of October, 2008.

15 BY DIRECTION OF THE COMMISSION



3 AAC 48 is amended by adding a new section to read:

3 AAC 48.648. Complete applications.

(a) This section applies to applications subject to timelines under AS 42.05.175 and to pipeline applications filed under 3 AAC 48.625.

(b) An application will be considered complete when filed unless the application:

(1) is rejected under 3 AAC 48.650(a) within 15 business days of the date the application was filed;

(2) is accompanied by a request for waiver of a filing requirement, and the waiver request is subsequently denied;

(3) is accompanied by a petition for confidential treatment that is subsequently denied, and the records filed under seal are withdrawn under the procedures stated at 3 AAC 48.047; or

(4) does not include a proposed public notice of the application that complies with (e) of this section.

(c) For the purposes of (b) of this section, an applicant requesting a waiver of any filing requirement shall file a separate motion for waiver in compliance with the filing requirements of 3 AAC 48.805. Interested persons may file a response to a waiver request by the end of the public comment period. The person requesting the waiver may file a reply to the response within five business days after the end of the public comment period. The commission will by order grant or deny the waiver request 30 days after the end of the public comment period. An application accompanied by a waiver request will be:

(1) considered complete on the date the application is filed if all requested waivers of application filing requirements are granted and all other filing requirements are met; or

(2) rejected without prejudice to refiling if any requested waiver of a filing requirement is denied.

(d) For the purposes of (b) of this section, an applicant requesting confidentiality on any component of an application must file a separate petition for confidential treatment in compliance with 3 AAC 48.045. Interested persons may file an opposition to the confidentiality petition by the end of the public comment period. The person seeking confidential treatment may file a reply to the opposition within five business days after the end of the public comment period. The commission will by order grant or deny the confidentiality petition 30 days after the end of the public comment period. An application accompanied by a petition for confidential treatment will be:

(1) considered complete on the date the application was filed if the confidentiality petition is granted and all other filing requirements are met;

(2) considered complete on the date the application was filed if the confidentiality petition is denied, the confidentiality proponent does not request to withdraw the record, and all other filing requirements are met; or

(3) rejected without prejudice to refiling if the confidentiality petition is denied and the commission grants a petition to withdraw the record under 3 AAC 48.047.

(e) Applicants shall file a proposed notice of the application with the commission, along with a purchase order reflecting that the applicant has arranged for publication of the notice in a newspaper of general circulation in the State of Alaska. The notice shall comply with 3 AAC 48.645 and contain:

- (1) a general description of the service proposed of the application;
- (2) a request that interested parties file public comments with the commission at the address specified in the notice;
- (3) a deadline for the public comment period of 21 days from the date of publication of the notice;
- (4) a statement indicating whether any motions for waiver or petitions for confidentiality will be filed with the application, along with a description of the information subject to the motion for waiver or petition for confidentiality;
- (5) the physical and mailing address and telephone number of the applicant;
- (6) the commission's mailing address and website address;
- (7) a statement that the Commission has not determined whether the application is complete;
- (8) a statement of the deadline for the Commission to determine whether the application is complete; and
- (9) a statement that the application will be available for review at the offices of the commission upon filing, along with a statement of the date that the application will be filed with the commission.

(f) Within five business days of the filing of an application and proposed notice, the commission will arrange for publication of the notice in a newspaper of general circulation in the state of Alaska. (Eff. ____/____/____, Register _____).

Authority:	AS 42.04.080	AS 42.05.241	AS 42.06.240
	AS 42.05.141	AS 42.05.281	AS 42.06.250
	AS 42.05.151	AS 42.05.661	AS 42.06.260
	AS 42.05.175	AS 42.05.810	AS 42.06.270
	AS 42.05.221	AS 42.06.140	AS 42.06.305
	AS 42.05.231		

3 AAC 48.650(a) is amended to read:

- (a) **The commission may dismiss an [AN] application that**
- (1) does not comply with a requirement established by statute or regulations and forms adopted by the commission;**
 - (2) contains a request for waiver that does not comply with 3 AAC 48.648(c); or**
 - (3) contains a petition for confidential treatment that does not comply with 3 AAC 48.648(d) [IS COMPLETELY UNACCEPTABLE AS TO FORM, CONTENT, OR OTHERWISE MAY BE DISMISSED AND RETURNED TO THE APPLICANT WITH A LETTER EXPLAINING THE REASON FOR THE ACTION AND STATING THAT THE ACTION IS WITHOUT PREJUDICE TO REFILING].**

Authority:	AS 42.05.141	AS 42.05.241	AS 42.06.270
	AS 42.05.151	AS 42.06.140	

3 AAC 48.650(b) is amended to read:

(b) If an application is found to be partially incomplete, **the commission will issue an order explaining why the application is being dismissed**[OR DEFECTIVE, A LETTER MAY BE WRITTEN TO THE APPLICANT CONTAINING THE STATEMENT "BY DIRECTION OF THE COMMISSION" IN WHICH ATTENTION IS DIRECTED TO THE OMITTED MATERIAL OR DEFECTS AND SPECIFYING A FUTURE DATE WHEN THE APPLICATION MAY BE DISMISSED UNLESS SATISFACTORY ACTION IS TAKEN TO CORRECT THE DEFICIENCIES OF THE APPLICATION. IF THE APPLICANT NEEDS ADDITIONAL TIME TO PERFECT HIS APPLICATION, HE MAY REQUEST AN EXTENSION AT LEAST FIVE DAYS BEFORE THE DEADLINE DATE SPECIFIED IN THE COMMISSION'S LETTER. THE COMMISSION MAY THEN BY LETTER GRANT OR DENY THE REQUEST OR SPECIFY AN ALTERNATIVE DEADLINE DATE]. (Eff. 1/13/73, Register 44; am ____/____/____, Register ____).

Authority: AS 42.05.141
AS 42.05.151

AS 42.05.241
AS 42.06.140

AS 42.06.270

3 AAC 48.650(c) is repealed.

(c) Repealed ____/____/____/ (Eff. 1/13/73, Register 44; repealed ____/____/____, Register ____).

Authority: AS 42.05.141

AS 42.05.151

AS 42.06.140

3 AAC 48 is amended by adding a new section to read:

3 AAC 48.652. Supplemental Information. After issuing an order finding an application to be complete, the commission may require the applicant to provide supplemental or clarifying information necessary for the commission to reach a decision on the application. The commission will request the applicant furnish the information by a specified date. If the applicant fails to respond in a timely basis, then the commission will proceed on the application on the basis of the application as filed. (Eff. ____/____/____, Register ____).

Authority: AS 42.05.141

AS 42.05.151

AS 42.06.140

3 AAC 48 is amended by adding a new section to read:

3 AAC 48.654. Contested Applications.

(a) Prior to the close of the comment period, interested persons may file comments or a protest of the application with the commission complying with 3 AAC 48.100.

(b) A protest of an application must include:

(1) specific grounds for the protest, including a listing of facts in dispute;
(2) any steps the applicant could take to mitigate the protest;
(3) any conditions the commission should consider applying to the application if approved; and

(4) a petition to intervene under 3 AAC 48.110.

(c) A filing that does not contain the information required in subsection (b) will be considered comments.

(d) The applicant may file a response to the protest within ten days of the close of the comment period.

(e) The commission will issue an order indicating whether there will be a hearing on the application within 15 days of the filing of the applicant's response to the protest.

Authority:	AS 42.04.080	AS 42.05.171	AS 42.06.140
	AS 42.05.141	AS 42.05.221	AS 42.06.240
	AS 42.05.151	AS 42.06.055	

3 AAC 48 is amended by adding a new section to read:

3 AAC 48.656. Separate Applications.

(a) If an applicant seeks commission designation as an eligible telecommunications carrier for more than one study area that applicant must file a separate application for each such study area.

(b) If an applicant seeks Commission approval to acquire control of more than one certificate of public convenience and necessity, that applicant may file a consolidated application for the multiple certificates of public convenience and necessity. The commission may consider the request to acquire control of each certificate of public convenience and necessity in a separate docket and may require the applicant to submit additional copies of supporting information.

(c) If an applicant seeks Commission approval for the issuance of more than one certificate of public convenience and necessity, that applicant must file a separate application for each proposed certificate of public convenience and necessity.

(d) If an applicant seeks Commission approval to provide telecommunications service in more than one study area, that applicant may submit a consolidated application for all areas. The commission may consider the request to provide service in each study area in a separate docket and may require the applicant to submit additional copies of supporting information. For the purpose of this subsection, the term "telecommunications" has the same meaning as set forth in AS 42.05.990(8).

(e) Any application submitted under (a) or (c) of this section that combines certificates of public convenience and necessity or study areas will be rejected.

Authority:	AS 42.05.141	AS 42.05.231	AS 42.06.140
	AS 42.05.151	AS 42.05.281	AS 42.06.240
	AS 42.05.221	AS 42.06.055	AS 42.06.305

3 AAC 48.661(f) is amended to read:

(f) The commission will determine if an application is complete in accordance with 3 AAC 48.648 [WITHIN 15 BUSINESS DAYS AFTER IT IS FILED WITH THE COMMISSION. IN THIS SUBSECTION, "BUSINESS DAY" MEANS A DAY OTHER THAN SATURDAY, SUNDAY, OR A STATE HOLIDAY]. (Eff. 5/5/2000, Register 154; am 5/18/20063, Register 166; am ____/____/_____, Register _____)

Authority:	AS 42.04.080	AS 42.05.221	AS 42.06.055
	AS 42.05.141	AS 42.05.241	AS 42.06.140
	AS 42.05.151	AS 42.05.281	AS 42.06.240

NOTICE OF UTILITY APPLICATION

The REGULATORY COMMISSION OF ALASKA gives notice that an application (*Docket Number*) has been filed by [*Utility Name*] for a [*short explanation of authority or designation sought (and services proposed, if applicable)*]. [*Utility Name*] is a [*type of business entity*] organized under the laws of the [*state of incorporation/organization*].

If applicable:

In conjunction with its application, [*Utility Name*] has filed a request for waiver of the following filing requirements: [*specify filing requirements subject to waiver requests*]. Interested persons may file a response to the waiver request with the Commission by 4 p.m. [*5 business days from anticipated date of publication*].

or

In conjunction with its application, [*Utility Name*] has filed a petition for confidential treatment of the following information filed in conjunction with the application: [*specify application information filed under seal*]. Interested persons may file a response to the petition for confidential treatment with the Commission by 4 p.m. [*5 business days from anticipated date of publication*].

The Commission has not determined that the applicant has filed a complete application, and will determine whether the application is complete by [*Option A or B; see below*]

Option A (no waiver request or confidentiality petition is filed with application):
15 business days from date of filing

Option B (applicant requests waiver of filing requirement or confidential treatment of application information):
30 days from end of public comment period.

You may obtain information about this application by contacting the consultant for [*Utility Name - Utility Contact, Address, and Telephone Number*]. The complete filing is also available for inspection at the Commission's office at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501; phone: (907) 276-6222, or may be viewed at the Commission's website at <http://rca.alaska.gov/RCAWeb/home.aspx>.

To comment on this filing, please file your comments by [*26 days from date of filing*], reference the docket number, and include a statement that you've filed a copy of the comments with [*Utility Name*]. Comments may be filed at the Commission's address above or via our website at: <https://rca.alaska.gov/RCAWeb/WhatsNew/PublicNoticesComments.aspx>. If you need a special accommodation to make your comments, please contact Joyce McGowan at 276-6222/TTY: 276-4533 by [*21 days from date of filing*].

DATED at Anchorage, Alaska, this ??th day of [*Month, Year*].

REGULATORY COMMISSION OF ALASKA

Robert M. Pickett, Chairman